



Virginia
Regulatory
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Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12VAC30, Chapter 120
Regulation title	Waivered Services
Action title	Regulations to establish a day support waiver for individuals with Mental Retardation
Document preparation date	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This action establishes a new program, the Day Support Waiver for Individuals with Mental Retardation ("Day Support Waiver") to provide day support and prevocational services for individuals who are waiting to receive services under the Mental Retardation Waiver ("MR Waiver").

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as

established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services, and § 1915 (c) of the *Social Security Act* provides for home and community based waiver programs such as the Day Support Waiver for Individuals with Mental Retardation.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to establish a new program, the Day Support Waiver for Individuals with Mental Retardation (“Day Support Waiver”), to provide day support and prevocational services for individuals who are waiting to receive services under the Mental Retardation Waiver (“MR Waiver”). In September 2005, there were approximately 2,900 individuals waiting to receive services under the Mental Retardation Waiver (“MR Waiver”). Individuals in the Day Support Waiver program will receive services until they are no longer eligible for Day Support Waiver services.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

New regulations containing the policy and procedures for the Day Support Waiver were developed in consultation with members of the General Assembly and in collaboration with DMHMRSAS and the MR Waiver Advisory Committee. The regulations are contained in six new sections under 12VAC30-120, Department of Medical Assistance Services, Waivered Services. The six sections are: 12VAC30-120-1500 which contains definitions of Day Support Waiver terms; 12VAC30-120-1510 which contains general coverage and requirements for Day Support Waiver services; 12VAC30-120-1520 which outlines individual eligibility requirements; 12VAC30-120-1530 which defines general requirements for home and community-based participating providers; 12VAC30-120-1540 which defines participation standards for home and community-based waiver services participating providers; and 12VAC30-120-1550 which further defines the covered services and outlines requirements for providers of these services.

This Waiver covers only those individuals who have a diagnosis of mental retardation. Day support services include training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level. Prevocational services are those services aimed at preparing an individual for paid or unpaid employment. They do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

The regulations are necessary to have operational authority for the waiver that is currently operating under emergency regulations. The emergency regulations will expire on June 30, 2006.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of these proposed regulations is that the Day Support Waiver provides an alternative for those individuals on the MR Waiver waiting list who could benefit from day support and prevocational services. By providing services to individuals with mental retardation in the community, the waiver is also intended to help delay or prevent institutional placement. There are no known disadvantages of these regulations to the agency, the public or the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The Medicaid funded Day Support Waiver will be offered under a 1915(c) home and community based care waiver that must be a cost-effective alternative to institutionalization. Including medical funding and administrative costs, the waiver is projected to cost \$5,837,400 (\$2,918,700 GF) during FY 2006. The Governor and General Assembly approved these amounts in the 2004 Appropriations Act. The appropriations for the waiver are sufficient to fund 300 individuals. Expenditures are expected to be on-going.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Individuals with mental retardation and their families, Office of Mental Retardation at DMHMRSAS, Community Services Boards (CSBs), and, Day Support and Prevocational Providers.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There is funding for 300 individuals with mental retardation to receive Day Support Waiver services. Forty Community Services Boards provide case management for individuals receiving waiver services. There are 119 day support providers and 55 prevocational providers. With the exception of 38 Community Services Boards that are government operated (approximately 30 of which also provide day support and/or prevocational services), all of the providers would qualify as small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities.</p>	<p>There are no additional costs to individuals. The Day Support Waiver is a new program but there are</p>

<p>Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>no additional requirements for providers beyond those requirements already in place under the existing Mental Retardation Waiver. With the additional available slots, some providers may need to hire additional staff if they choose to increase the number of individuals served through their programs. As the cost for increased staff will vary by individual provider, the state cannot project this cost to providers.</p>
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Currently, individuals can pay privately for services but few can afford the cost. Localities are also paying for day support but funding is limited. These regulations were developed by DMAS in concert with the MR Advisory Committee that includes parents of children served by the MR Waiver. Many of the choices made regarding various aspects of this program were based upon input by this Committee.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

DMAS staff in consultation with DMHMRSAS staff reviewed the comments summarized below. The proposed recommendations were evaluated with the following considerations: consistency with the CMS approved application for the Day Support Waiver; impact on individuals being served in the waiver and feasibility within the current system; and, appropriateness of recommendation for regulation versus the provider manual.

Commenter	Comment	Agency response
<p>Virginia Office for Protection and Advocacy (VOPA)</p>	<p>Summary of comments received:</p> <ol style="list-style-type: none"> 1. Modify definitions for day support and prevocational services. 2. Add additional documentation requirements and timeframes for DMHMRSAS, case managers, and waiver providers. 3. Clarify the individual's or family/caregiver's involvement with the CSP development and modification process. 4. Clarify where monthly visit should occur for individuals residing 	<p>The following changes to these regulations were made in response to these comments:</p> <ol style="list-style-type: none"> 1. The language regarding the individual's or family/caregiver's involvement with the CSP development process and modifications to supporting documentation was clarified. 2. Clarified that monthly visits for individuals who reside in DSS-licensed placements must occur at the placement. 3. Added additional language to clarify provider documentation requirements related to billing during transportation time and amount and types of services rendered.

	in DSS-licensed placements. 5. Clarify documentation requirements for providers.	
Endeppendence Center, Inc.	1. Amend definitions of case manager, Day Support Waiver for Individuals with Mental Retardation, and home and community-based waiver. 2. In the enrollment process, further clarify the family’s involvement in eligibility determination. 3. Require that providers specify location of services.	The following change to these regulations was made in response to the comments: The definition of Day Support Waiver for Individuals with Mental Retardation was amended to remove the term “selected”.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment. The Day Support Waiver will have a positive impact on families. By providing day support and prevocational services, the waiver will help to maintain family stability and reduce the need for institutional placement.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

As the Day Support Waiver is a new program, the emergency regulations for the Day Support Waiver were new regulations added under 12 VAC 30-120, Waivered Services. The changes outlined below are changes that were made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-120-1500		Definitions	The following change was made in the proposed permanent regulations: 1. The definition of Day Support Waiver

			<p>for Individuals with Mental Retardation was modified to provide additional clarification.</p> <p>2. The definition of home and community-based waiver services was modified to be consistent with the CMS approved application for the waiver, which specifies that only individuals with mental retardation are covered under this waiver.</p>
12VAC30-120-1510		General coverage and requirements for Day Support Waiver Services.	<p>The following change were made in the proposed permanent regulations:</p> <p>Language regarding the restriction of waiver services to individuals in institutions was moved to this section from 12VAC30-120-1520(C) to be consistent with a change made to the MR Waiver regulations at the recommendation of the Office of the Attorney General.</p>
12VAC30-120-1520		Individual eligibility requirements	<p>The following changes were made in the proposed permanent regulations:</p> <p>1. Language regarding the CSP development process was updated to reflect that CSPs are developed with individuals and their families and that modifications to CSPs must be approved by the individual or family/caregiver.</p> <p>2. Language regarding the restriction of waiver services to individuals in institutions was moved from this section to 12VAC30-120-1510(B) to be consistent with a change made to the MR Waiver regulations at the recommendation of the Office of the Attorney General.</p> <p>3. Clarified that monthly visits must take place at the individual's placement for those individuals who reside in DSS-licensed placements.</p>
12VAC30-120-1530		General requirements for home and community-based participating providers	<p>The following change was made in the proposed permanent regulations:</p> <p>Added language to clarify documentation requirements in the provider's attendance log.</p>
12VAC30-120-1550		Services: Day Support and Prevocational Services	<p>The following changes were made in the proposed permanent regulations:</p> <p>1. Added requirement that staff providing services be trained prior to providing</p>

			<p>direct services to be consistent with the CMS approved application.</p> <p>2. Added language to provide further clarification of provider requirements for billing during transportation.</p>
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Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment, but may increase disposable family income by providing services often paid for by families. The MR Day Support Waiver will have a positive impact on families. By providing day support services, the waiver will help to maintain family stability and reduce the need for institutional placement.